

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14342 of Hudai Yavalar, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 7106.11 to change a nonconforming use from retail grocery, first floor, to grocery-delicatessen, first floor, in an R-3 District at premises 1643 - 34th Street, N.W., (Square 1278, Lot 848).

HEARING DATES: October 9, 1985 and December 18, 1985

DECISION DATE: January 8, 1986

FINDINGS OF FACT:

1. As a preliminary matter at the October 9, 1985 Public Hearing, the lessee of the applicant's property requested that the hearing of the subject application be continued in order to allow him time to obtain counsel and prepare his case. A representative of Advisory Neighborhood Commission (ANC) 2E testified that the ANC had no objections to the continuance. The chair continued the case until the Public Hearing of December 18, 1985.

2. The subject site, known as premises 1643 34th Street N.W. is located at the southeast corner of the intersection of 34th Street and Dent Place. It is in an R-3 District.

3. The subject site is rectangular in shape with a frontage of 16.50 feet along 34th Street and 72 feet along Dent Place. It is improved with a two and three story wood structure. The first floor of the western portion of the site is occupied by the grocery store in question. The store has two commercial style display windows on its north side and its entrance door and another display window on the west side. The site abuts residentially occupied dwellings on its east and south sides and is separated from residentially occupied dwellings across Dent Place and 34th Street to the north and west respectively.

4. The R-3 District extends in all directions from the subject site. A C-2-A District is located approximately one block or 360 feet, to the east of the subject site. Georgetown University is located one block west of the site. Duke Ellington High School is one block northwest.

5. Pursuant to Sub-section 8207.2 of the Zoning Regulations, the applicant is seeking a special exception to change a nonconforming use from a retail grocery store to a grocery store/delicatessen at the subject site.

6. Sub-section 8207.2 of the Zoning Regulations states in pertinent part that the Board is authorized to grant special exceptions where such special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and maps and will not tend to affect adversely the use of neighboring property in accordance with said Zoning Regulations and maps.

7. Sub-section 7106.11 states in pertinent part that a nonconforming use may be changed to a use which is permitted as a matter-of-right in the most restrictive district in which the existing nonconforming use is permitted as a matter-of-right, provided:

- a. The proposed use will not adversely affect the present character or future development of the surrounding area in accordance with these regulations. Such surrounding area shall be deemed to encompass the existing uses and structures within at least 300 feet in all directions from the nonconforming use.
- b. The proposed use will not create any deleterious external effects, including but not limited to noise, traffic, parking and loading considerations, illumination, vibration, odor, and design and siting effects.
- c. In Residential Districts, the proposed use shall be either a dwelling, flat, apartment house or a neighborhood facility.

8. The owner of the property authorized the tenant and owner of the grocery store business, Morteza Golbadi, to pursue the subject application.

9. Both the grocery store use and the delicatessen use are first permitted in a C-1 District.

10. The previous certificate of occupancy, No. B 4960, dated April 26, 1957, permits a retail grocery to be operated on the first floor of the subject structure.

11. The lessee has operated a grocery at the subject site for almost one year. He has a five year lease on the site with an option to renew the lease for two years.

12. Gross sales from the subject grocery business average between 200 to 250 dollars per day.

13. Seven months prior to the hearing the lessee began selling sandwiches to generate additional income to sustain his business. He testified that he was not aware that he needed a special exception to sell sandwiches from the grocery store.

14. The lessee intends to sell between ten to 15 sandwiches per day generating 25 to 30 dollars of net profit per day.

15. The requested special exception will not result in an increase in the number of staff or the hours of operation of the business.

16. The subject grocery employs two persons including the lessee.

17. The grocery/deli's hours of operation will remain the same as the existing operation namely, from 8:00 A.M. to 8:00 P.M. Monday through Friday and from 8:00 A.M. to 7:00 P.M. Saturday and Sundays.

18. The grocery occupies approximately 400 square feet of the subject structure. The remainder of the structure is devoted to residential use.

19. The commercial portion of the structure is equipped with a restroom, two compartment sink, garage disposal, work table, deli case, slicer and hand washing basin. No additional equipment will be needed for the deli operation.

20. The deli operation will be limited to the preparation of cold sandwiches. There will be no grill or cooking facilities on the premises. No hot solid food will be sold, except that heated in a microwave.

21. Approximately 50 square feet of the grocery store will be devoted to the deli operation.

22. There will be no tables, chairs or counter facilities for eating at the subject site.

23. No changes are proposed to be made to the exterior of the structure.

24. Trash cans are stored inside the structure. Trash is picked up from the front entrance twice a week by a private company.

25. The city provides a trash box outside in front of the grocery/deli and the lessee provides one inside for use by his customers.

26. The lessee checks his premises several times each day and he has not observed any littering.

27. The lessees will pick up most supplies for the grocery/deli business himself so no loading problems from outside vendors will result.

28. There have been no problems with noise or traffic congestion associated with the grocery and the lessee does not anticipate any as a result of the deli operation.

29. Most of the customers of the subject business are neighbors and 80 percent of the customers walk to the store. The people that arrive by car park on the street.

30. By memorandum dated October 2, 1985 the Office of Planning (OP) recommended denial of the the subject application. The OP was of the opinion that the intensification of the existing nonconforming grocery use with the addition of a delicatessen will circumvent the intent and purpose of the Zoning Regulations. The residential component of the Georgetown neighborhood is well served by commercial uses along Wisconsin Avenue and M Streets, N.W. These C-2-A zoned properties attract visitors who park and traffic the nearby residential streets. Likewise, students attending Georgetown University and Duke Ellington High School frequent these shops and eating establishments. It is the policy of the OP, as emphasized by the Comprehensive Plan, to discourage the encroachment of nonresidential uses in residential areas. OP is of the opinion that the addition of the deli to the grocery at this location will threaten the residential tranquility of the area, and as such be inconsistent with the Comprehensive Plan.

The Office of Planning views the addition of the deli as being convenient and desirable service to which the nearby High School and University students will be attracted. The increased business to the site for the deli service will raise the potential for objectionable affects (i.e. trash, noise, increased pedestrian traffic). OP reported that the addition of the deli should not be considered a neighborhood facility for this reason. The OP further reported that the long existence of the subject store at this site is characteristic of many nonconforming corner grocery stores in residential zones throughout the city. Most of these stores began at a time when large grocery stores were non-existent or too far away to walk to from home. The Zoning Regulations acknowledge the use history in the community and allows their continued existence provided their operation does not grow to a level which would be objectionable or perpetuate its nonconforming continuance.

31. The Board does not concur with the OP's reasoning and recommendation. The Board finds that the neighborhood demand for and support of the deli service proposed indicates that the grocery deli will be a neighborhood facility. The Board does not find that the proposed sandwich preparations will constitute an encroachment of a nonresidential use since the grocery has existed at the site for many years and is not being expanded. Further, the Board does not find that the deli aspect of the grocery will threaten the residential tranquility of the area since the operation will be limited to the sale of cold sandwiches and not full scale deli services. There has been no evidence presented that the deli service will increase the trash, noise or traffic in the area. The Board further finds that it is obliged to follow the Zoning regulations as they are in effect and that the comprehensive plan is not relevant to its conclusions.

32. By letter dated October 3, 1985 Advisory Neighborhood Commission (ANC) 2E reported that it voted to recommend denial of the subject application for the following reasons:

- a. The location is within a short walk of other delicatessen property located in C-2 zoned areas, including one only one block away;
- b. The ANC does not believe that any exceptional difficulties or hardships exist which justify this request;
- c. The granting of this request would be an undesirable precedent and would substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Maps;
- d. There appears to be substantial support for Mr. Golbadi's operation of this store, but there is also concern by other residents that a delicatessen within this quiet, single family neighborhood would be quite disruptive, since the ANC is of the opinion that it is likely to attract large numbers of people from outside of the immediate neighborhood and lead to problems related to littering and people loitering at doorsteps of nearby houses while consuming sandwiches;
- e. The property-owner and the operator of the store should have made themselves aware of the restrictions and regulations that govern the uses of premises before embarking on this operation.

33. The Board is required by statute to give "great weight" to the issues and concerns of the ANC embodied in a written resolution. The Board does not concur with the reasoning and recommendation of the ANC. The Board finds that the proximity of other delicatessens is not a sufficient basis for the denial of a special exception. Demand and patronage for the subject facility have been demonstrated in the record. The Board also finds that the requirements to demonstrate exceptional difficulties or hardships and that the proposed use does not substantially impair the intent, purpose and integrity of the zone plan apply to a variance case pursuant to Subsection 8207.11 and do not apply to a special exception which the applicant is seeking under Sub-section 8207.2. The granting of the application will not set an undesirable precedent as each application is judged on its own merits. The Board does not find that it has been demonstrated that the deli operation will lead to problems of littering and loitering. Such is conjectural on the part of the ANC and contrary to the evidence of record.

34. A letter from property owners immediately adjacent to the subject site was submitted to the record. The letter stated that the subject business was clean and respectable and had a positive impact on the community. They did not notice that the business generated any debris, loitering, noise or traffic problems since the current lessee began operating it. They do not believe any adverse consequences will result from a deli operation at the site.

35. Many neighbors of the subject site submitted letters to the record in support of the subject application. They listed the reasons listed above. They also wrote that the business was a well-organized establishment and an asset to the neighborhood. They further noted that the proposed deli would be an additional convenience for the elderly living in the area.

36. One neighbor of the subject site testified in opposition to the application at the public hearing. She testified that the premises are tiny and if the deli services are included, the grocery services will decline. The market for the deli products is not the neighborhood but construction workers from the project across the street. The Board reaffirms that a neighborhood demand for the proposed services has been demonstrated, construction workers notwithstanding.

37. Several letters were submitted to the record in opposition to the subject application on the grounds of noise, litter and loitering. The Board finds that the record contradicts these objections. One neighbor wrote that a non-conforming use is tolerated only if it continues in the same form as it was under prior ownership and for the

same use, in this case a grocery store. In reference to the latter objection the Board finds that sub-section 7106.11 permits the change of a non-conforming use. Another neighbor asserted that the proposed use would pose a security problem. The Board finds no probative evidence in the record to support this objection. Another neighbor asserted a lack of need for the proposed use. The Board finds that this is a business venture on the part of the applicant and is not a zoning issue.

CONCLUSION OF LAW AND OPINION:

Based on the record, the Board concludes that the applicant is seeking a special exception, the granting of which requires a showing through substantial evidence that the applicant has complied with the requirements of Paragraph 7106.11 and that the relief requested under Sub-section 8207.2 can be granted as in harmony with the general purpose and intent of the Zoning Regulations and will not tend to affect adversely the use of neighborhood property.

The Board concludes that the applicant has met the burden of proof. The proposed use is designed to provide convenient retail services for the day-to-day needs of a small tributary area, with a minimum impact upon surrounding residential development. The proposed use is permitted as a matter-of-right in the most restrictive district which the previous use is permitted as a matter-of-right. The Board concludes that the proposed use constitutes a neighborhood facility which will not adversely affect the present character or future development of the area. Accordingly, the application is GRANTED SUBJECT to following CONDITIONS:

- a. Approval shall be limited to a period terminating on September 30, 1989.
- b. Operation of the facility shall be limited to the present lessee, namely Morteza Golbadi.
- c. A maximum of fifty square feet of the subject premises shall be dedicated to the preparation of carry-out foods.
- d. No hot food shall be prepared on the subject premises. Hot beverages, such as coffee and tea, are not prohibited.
- e. No range or oven facilities shall be located on the subject premises except for a microwave oven.

VOTE: 3-1 (Charles R. Norris, Carrie L. Thornhill to grant;
Lindsley Williams to grant by proxy; William F.

McIntosh to deny).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:

Cecil B. Tucker by B. J. [Signature]
CECIL B. TUCKER
Acting Executive Director

FINAL DATE OF ORDER: _____

09 MAY 1966

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

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